

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Charles R. Breyer, Judge

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
VS.)	NO. CR. 14-00102 CRB
)	
IAN FURMINGER, EDMOND ROBLES,)	
and REYNALDO VARGAS,)	
)	
Defendants.)	
)	

San Francisco, California
Wednesday, March 5, 2014

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

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**BY: BRIAN H. GETZ
JOHN PAUL PASSAGLIA**

Wednesday - March 5, 2014

2:10 p.m.

P R O C E E D I N G S

THE CLERK: Calling Case CR. 14-0102, *The United States of America versus Ian Furminger, Edmond Robles, and Reynaldo Vargas*. Appearances, counsel.

MR. HEMANN: Good afternoon, Your Honor. John Hemann for the United States.

THE COURT: Good afternoon.

MR. GETZ: Brian Getz and John Passaglia for Mr. Furminger, who's present and ready for these proceedings.

With the Court's permission, Brian Getz on behalf of Mr. Vargas, who is present, but his attorney is in southern California, and has asked me to stand in specially.

THE COURT: And his attorney is?

MR. GETZ: Harry Stern. S-t-e-r-n.

THE COURT: Okay.

MS. BURKE: Eileen Burke, for Mr. Robles, who's present.

THE COURT: I'm sorry. Your name?

MS. BURKE: Eileen Burke.

THE COURT: And you're representing Mr. Robles?

MS. BURKE: Yes.

THE COURT: Okay. All right.

MR. HEMANN: So, Your Honor, a couple of things. First one has to do with Mr. Robles. Mr. Robles was not

1 represented at the earlier -- well, he was represented by
2 Mr. Rains, just specially appearing at the arraignment. He was
3 advised of the charges, but did not at that time enter a plea.

4 We discussed that with Magistrate, and suggested that the
5 Court -- that Your Honor might permit him to enter a plea
6 today, or we can go back to the Magistrate.

7 **THE COURT:** Yeah. Does he wish to enter a plea?

8 **MS. BURKE:** He does.

9 **THE COURT:** And the plea?

10 **MS. BURKE:** Not guilty.

11 **THE COURT:** There. That's over.

12 **MR. HEMANN:** Your Honor, we have discovery that we
13 will be producing to the defendants tomorrow. It is --
14 beginning tomorrow, there will be two tranches of discovery
15 that we'll be producing electronically starting tomorrow, and
16 concluding next week.

17 We're going to be providing a protective order to the
18 defense. We need to talk about it with Mr. -- with Mr. Stern,
19 who's not -- who's not here. We'll hopefully present that to
20 the Court on Friday, so that we can go ahead and produce all of
21 the discovery. There's Social Security numbers and personal
22 identifiers in the police reports. We want that covered by a
23 protective order. So that would be -- that would be done in
24 short order.

25 The Government would like to set a date for any motions on

1 the indictment, bill of particulars, severance, motion to
2 dismiss the indictment, et cetera; and also potentially a
3 motion to disqualify Mr. Stern. There is a potential conflict,
4 given his law partner, Mr. Rains', prior representation of the
5 two codefendants. We're still researching that. We have not
6 made a decision as to whether to file that, but we may be
7 required to file that motion. And we would suggest a hearing
8 date of April the 23rd for both any motions on the indictment,
9 and a motion to disqualify if the Government files one.

10 **MR. GETZ:** April 23rd is good with Mr. Furminger and
11 good with Mr. Vargas.

12 **MS. BURKE:** It's not so great with me, Your Honor. I
13 begin a two-month trial this afternoon.

14 **THE CLERK:** Counsel, could you speak into the mic?

15 **MS. BURKE:** I begin a two-month trial this afternoon
16 over at 850 Bryant Street here in San Francisco. So if we
17 could just go a little further out -- a week or two out -- that
18 would be helpful.

19 **MR. HEMANN:** That would be fine with the Government,
20 Your Honor. If we could go maybe a week. And if we have to
21 push it further, we could go an additional week by stipulation.

22 **MS. BURKE:** Sure.

23 **THE COURT:** April 30th? Is that satisfactory?

24 **MS. BURKE:** Cutting it close, but we could try that.

25 **THE COURT:** All right. April 30th for those motions.

1 **MR. HEMANN:** Yes, Your Honor.

2 **THE COURT:** Okay. Now I want to set a trial date.

3 **MR. HEMANN:** We were going to suggest, Your Honor,
4 that we set a trial date or request the trial date be set when
5 we come back on April 30th.

6 **THE COURT:** Well, I want to set a trial date today.

7 **MR. HEMANN:** That would be great, Your Honor.

8 **THE COURT:** So assuming -- obviously, I haven't ruled
9 on the motions because I don't have them in front of me, but
10 assuming that I rule on the motions in such a way that the case
11 would then proceed to trial as it presently is charged with the
12 people who are presently representing the parties, the question
13 is: How long does it take to prepare for trial in this case?

14 I don't know how extensive the discovery is. You're going
15 to start complying with it as of this week -- at least, one
16 package of it. You say two submissions, or whatever the word
17 you people use?

18 **MR. HEMANN:** Tranches, I think I said, Your Honor.

19 **THE COURT:** Yeah. Tranches. Yeah. So when is when
20 is tranche number two, or what is tranche number one?

21 **MR. HEMANN:** It's about -- the total is about 70
22 binders of documents, some of which have very few pages in
23 them.

24 **THE COURT:** Okay. And you say the total. Do you
25 mean of the two tranches?

1 **MR. HEMANN:** Yes.

2 **THE COURT:** Okay. So they're --

3 **MR. HEMANN:** It is a manageable amount. It is
4 primarily police reports. SFPD reports.

5 And it sounds like a lot, but certainly they're not. Each
6 binder is maybe a two-inch binder. I can't -- I don't know
7 exactly what the box count of that is, but it seems a
8 manageable amount of discovery. And we would --

9 **THE COURT:** When would the Government be ready to try
10 the case?

11 **MR. HEMANN:** We're ready as soon as the Court sets
12 it.

13 **THE COURT:** Okay. Let's hear from the Defense.

14 **MR. GETZ:** On behalf of Mr. Furminger, we'd like to
15 be ready as soon as possible, because Mr. Furminger cannot go
16 back to work until he gets through this case, but --

17 **THE COURT:** Give me a date.

18 **MR. GETZ:** I can't. Well, I'd like to give the Court
19 a date, but I think for me to state a date before I've seen the
20 discovery, without --

21 **THE COURT:** I'm going to give it an anticipatory
22 date. You come in and you say, "I want it set as soon as
23 possible." There's no such date as "as soon as possible." So
24 I need -- I'm going to set a date.

25 And I know you haven't seen the discovery. And I know

1 once you see the discovery, you may hold a different opinion,
2 but this case has been going on, I think -- the
3 investigation -- for some period of time. The Government
4 doesn't seem to be creating any obstacles in terms of turning
5 over discovery. And so I -- and you say to me you want this
6 case to go as soon as possible. So I'd like to know: What did
7 you have in mind?

8 **MR. HEMANN:** Ah.

9 **THE COURT:** Not you. Mr. Getz.

10 **MR. GETZ:** Yeah. Of course. And I'm going to answer
11 the Court's question.

12 **THE COURT:** Okay.

13 **MR. GETZ:** But if the Court will afford me just a
14 little leeway on this, it may sound a bit circuitous, but I do
15 believe that before Your Honor there is a certain standard of
16 excellence in this court that Your Honor demands of the
17 attorneys that appear before Your Honor. And I certainly
18 intend to be fully prepared and to meet that standard of
19 excellence in this case.

20 So again, not having reviewed the discovery, not having
21 commenced investigation --

22 And it is true the Government's had three years to prepare
23 the case; but this indictment for us is about a week in our
24 hands. So I'm not extremely comfortable saying to the Court
25 I'm going to be ready by such-and-such a date. And I don't

1 think that is the right way for me to get started in this court
2 before Your Honor.

3 I think by the time we return in April, I will have had an
4 opportunity to review the discovery. And I'm sure we can pick
5 a date for 2014, if that's convenient with the Court; but I
6 just feel that when we say we're going to be ready and we pick
7 a date, that's in stone. And if I say that now, before I've
8 read even one police report in this case, I think that would be
9 ill advised.

10 So I have tremendous respect for the Court, and I intend
11 to be fully prepared.

12 **THE COURT:** I'm sure you will be prepared.

13 Here is the problem I see. The problem I see is that the
14 later I set out the setting of the trial date, the -- not just
15 the later the trial date becomes, but what happens is that
16 attorneys fill their calendar.

17 Now if you're saying to me, Mr. Getz, "Look. I'll tell
18 you this, Judge. You set the trial date on April, whatever day
19 that is; April such-and-such. And I promise you that I will
20 not set any trial dates for any of my other clients between now
21 and then for some period of time," that's fine with me. I'll
22 do it that way.

23 But what happens is you come in -- not you. One comes in
24 and says, "Oh, Judge, I'm sorry. I can't try it in this month
25 because I've just set a trial date in this month." And then I

1 have three attorneys with all of their different schedules.

2 And that's what happens.

3 That's why I like to set a trial date now. And I'll set
4 it way out, and give you as much time as reasonably necessary
5 to prepare, but I want to get --

6 And maybe the thing to do is for me to set a long trial
7 date out, and then give the parties the right to advance it if
8 they -- if they feel they can prepare. I think that's what I'm
9 going to do.

10 In other words, I'm going to set a trial date. I'll set a
11 trial date in January. I'll set a trial date in January.
12 First week in January.

13 You're all free then. Right? I'd like to hear something
14 from you.

15 **MR. GETZ:** May I confer with Mr. Furminger for a
16 moment?

17 **THE COURT:** Sure.

18 **MR. GETZ:** He's got something to say on this.

19 **THE COURT:** I may advance it if you can go to trial
20 earlier.

21 **MR. GETZ:** Okay. Mr. Furminger would like an earlier
22 date than January.

23 **THE COURT:** Oh, okay.

24 **MR. HEMANN:** So would Mr. Hemann.

25 **THE COURT:** Okay. Let's take a look at the calendar

1 here. Why is that -- well, what about November 3rd?

2 **MR. GETZ:** Mr. Furminger likes November 3rd.

3 **THE COURT:** So do I.

4 **MR. HEMANN:** So does the Government.

5 **MS. BURKE:** So does Mr. Robles.

6 **THE COURT:** Now, that's without prejudice to any
7 party coming in and asking to advance the trial date. If the
8 defendant wants an earlier trial and his counsel can get ready,
9 I am inclined to grant it. I'm inclined to grant it.

10 The Government should be ready now. They bring these
11 charges. They should be ready to go to trial. So I'm not
12 concerned about the Government's concerns here. I'm concerned
13 about defense counsel's concerns that they are prepared to try
14 the case.

15 So November 3rd for trial. Pretrial October 23rd.

16 And I'll see any number of you back here in April. Right?

17 **MR. HEMANN:** Correct. And when would you like --

18 **THE COURT:** And I'll exclude time for effective
19 preparation.

20 **MR. HEMANN:** Thank you, Your Honor.

21 **THE COURT:** Yes, Mr. Getz.

22 **MR. GETZ:** Your Honor, in connection with the
23 April -- with the next court date, Mr. Vargas resides in the
24 Central District. And now that the Court has set the matter
25 for trial and ordered him here for trial, would the Court

1 | consider excusing his appearance at the next court appearance?

2 **THE COURT:** No. I want everybody here. There won't
3 be so many dates that he has to be here, but I want him here at
4 the beginning. If I have -- depending on whatever is in front
5 of me. I don't know whether what's going to be in front of me
6 is, quote, a "disqualification," a severance. It could be
7 anything, so I don't want to excuse him at this time.

8 **MR. GETZ:** Thank you.

9 **MR. HEMANN:** And then in terms of -- the motions
10 should be filed for an April 30th hearing on April 9th?

11 **THE COURT:** Whatever the schedule. April 9th.
12 That's fine. Is that agreeable with everybody?

13 **MR. HEMANN:** Yes, Your Honor.

14 **MR. GETZ:** Yes.

15 **THE COURT:** Thank you very much.

16 **MR. GETZ:** Thank you.

17 **MR. HEMANN:** Thank you, Your Honor.

18 (At 2:22 p.m. the proceedings were adjourned.)

19 I certify that the foregoing is a correct transcript from the
20 record of proceedings in the above-entitled matter.

21
22 Lydia Zinn

23		<u>April 6, 2015</u>
	Signature of Court Reporter/Transcriber	Date
24	Lydia Zinn	

25